IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2929 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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HASMUKH @ ASHOK KANJIBHAI SUTHAR

Versus

POLICE COMMISSIONER AHMEDABAD CITY

Appearance:

1. Special Civil Application No. 2929 of 2002

MR MAKBUL I MANSURI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 01/05/2002

ORAL JUDGEMENT

By means of filing this petition, the petitioner has challenged the order of detention dated 26-11-2001 passed by the Police Commissioner, Ahmedabad City.

2. It is a settled principle of law that in order to

bring a person within the expression "dangerous person" as defined in clause (c) of section 2 of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short `the Act of 1985'), there should be positive materials to indicate that such person is habitual of committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or XVII of Chapter V of the Arms Act and that single or isolated act falling under the said Chapters cannot be characterised as a habitual acts as envisaged in section 2(c) of the PASA Act. Further, besides a person being a dangerous person, his activities should also fall within the ambit of expression `public order'. A distinction has to be drawn between the `law and order' and `maintenance of public order'. A reference may be made of M.J.Shaikh V. M.M. Mehta, Commissioner of Police & Ors., reported in 1995 (2) GLR 1268.

3. Heard learned advocate for the petitioner and the learned AGP for the State. Also perused the record. Learned advocate for the petitioner has submitted that five criminal cases under Secs.397 and 114 of the Indian Penal Code have been registered against the detenu, three at Naranpura Police Station, one at Satellite Police Station and one at Ellisbridge Police Station. He has further submitted that in the first offence being C.R.No.171/2001 dated 12-4-2001 registered at Naranpura Police Station, detenu was arrested on 9-11-2001 and at the time of passing the detention order i.e. on 21-11-2001, he was in judicial custody. Drawing my attention towards page 14 of the compilation, which is the grounds of detention, he has contended that detenu was in judicial custody at the time of passing the detention order which aspect ought to have been considered by the authority while passing the detention order. In this connection, he has relied upon the case of Amritlal and Other Vs. Union Govt. Through Secy., Ministry of Finance and Others, AIR 2000 S.C. 3675 wherein it was held at Head note as under:

> "Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (46 of 1988), S.3--Satisfaction of detaining authority--"Likelihood of detenu moving an application for bail"--not sufficient--It is different from "Likelihood to be released on bail"".

4. It seems that there is non-application of mind on the part of detaining authority in passing the detention order as the detenu was in judicial custody when the

order of detention was passed which aspect has not been considered by the authority and hence, in view of the judgment rendered in Amritlal (supra), the continued detention of the detenu is illegal and the same cannot be sustained.

5. The petition is allowed. The impugned order of detention dated 21-11-2001 passed against the detenu is hereby quashed and set aside. The detenu Hasmukh @ Ashok Kanjibhai Suthar is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted.

(R.P.DHOLAKIA,J.)

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